

TTAB

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-3513 ON THE DATE INDICATED BELOW

By: Carla Archery
DATE: 04/30/02

BOX TTAB - FEE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SAINT-GOBAIN ABRASIVES, INC.

Petitioner,

v.

UNOVA INDUSTRIAL AUTOMATION SYSTEMS, INC.

Respondent

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: Cancellation No.
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PETITION FOR CANCELLATION

05-02-2002

U.S. Patent & TMOc/TM Mail Rcpt Dt. #34

Honorable Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

In the matter of Trademark Registration No. 2,516,176 issued December 11, 2001:

Saint-Gobain Abrasives, Inc., a Massachusetts corporation with a place of business at One New Bond Street, Worcester, Massachusetts 01615 ("Saint-Gobain"), believes that it will be damaged by the registration issued for the goods therein identified and hereby petitions to cancel the registration of said trademark. The grounds for cancellation are as follows:

1. Unova Industrial Automation Systems, Inc. ("Unova") has secured registration of a blue colored stripe or band, applied to the peripheries of the goods adjacent the rear face thereof and which is less width than the thickness of the wheel or disks, as a trademark for power operated abrasive wheels and abrasive disks, as evidenced by Registration No. 2,516,176. No specific shade of blue is identified, by Pantone number or otherwise.

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2. Saint-Gobain is and has for many years been engaged in the manufacture and distribution of abrasives, including power operated abrasive wheels and disks, and has built a large and profitable business in connection therewith.

3. Saint-Gobain has for many years used and uses blue stripes and bands of various colors in connection with abrasive products for many years.

4. Saint-Gobain has used and uses blue stripes, and other colors of stripes, on abrasive wheels in the same and similar manners as Unova.

5. Other companies that make abrasive products, including abrasive wheels and abrasive disks, use various colors for such goods.

6. In the abrasives industry, colors used on and in connection with products such as wheels and disks function as an indicator of abrasive grit size and/or application.

7. In the abrasives industry, colors used on and in connection with products function to assist operators to know when a product should be used or should be replaced with another.

8. In the abrasives industry, colors of stripes across an abrasive wheel designate speed.

9. Unova's alleged mark is not distinctive of its goods under Section 2(f) of the Trademark Act because Unova has not had substantially exclusive use of the alleged mark. The color blue has been used in a commercially significant manner by Saint-Gobain and by others in the industry, in connection with abrasive wheels and abrasive disks and like abrasive products.

10. There is a particular shade of blue which has been used extensively by Saint-Gobain itself and through a predecessor in interest and in title which is widely known in the abrasives industry and associated with Saint-Gobain's abrasive products. This blue color is Pantone 300.

11. Unova's alleged mark is not distinctive of its goods because Unova uses a variety of colors of stripes on abrasive wheels and abrasive disks, and each of such colors serves a functional purpose, including the blue stripe which is the subject of the registration herein sought to be cancelled.

12. Unova's alleged mark is not entitled to registration because Unova's registration covers more than one mark; the registration fails to include a clear and specific description of the shade of color of the alleged mark, and the registration accordingly covers a wide variety of different blue colors, from light blue to navy.

13. If Unova is able to maintain its registration for the mark which is the subject of this Petition, Saint-Gobain and others would be damaged insofar as there would be a cloud on their ability to use and to continue to use any blue color for stripes and bands on abrasive wheels and disks for functional purposes.

14. The registration which is the subject of this petition accords a *prima facie* exclusive right to Unova to use the mark. Such registration is a source of damage and injury to Saint-Gobain and its customers and others who use such colored stripes on such abrasive products for reasons of functionality having nothing to do with source identification.


WHEREFORE, Saint-Gobain prays that Registration No. 2,516,176 be cancelled.

A duplicate of this Petition for Cancellation is enclosed herewith.

The \$300.00 filing fee for this Petition for Cancellation may be charged to
Deposit Account No 02-0755.

Date: 4/29/02

Respectfully submitted,

By: 
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April 30, 2002



BOX TTAB - FEE
Commissioner Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

05-02-2002

U.S. Patent & TMO/TM Mail Rcpt Dt: #34

Dear Sir:

We are enclosing herewith the following documents set forth below, which are to be filed in the Patent and Trademark Office.

Please charge all government filing fees with respect to the enclosed documents to our Miscellaneous Account No. 02-0755.

Very truly yours,

BALLARD SPAHR ANDREWS & INGERSOLL, LLP


ROBERTA JACOBS-MEADWAY

Enclosures: Petition to Cancel

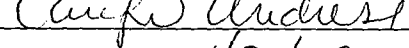
Saint-Gobain Abrasives, Inc.v. Unova Industrial Automation Systems, Inc.

Reg. No. 2,516,176 Miscellaneous Design (blue)

Fee: \$300.00

Attorney Docket No. 893459

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RJM/cda

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